

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RUSSELL MARTINEZ,

Plaintiff,

v.

**USDC Case No. 14-CV-00534 KBM/WPL
District Court Case No. D-117-CV-2014-00159**

JOSEPH SALAZAR, et al.,

Defendants.

**ESPANOLA DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO COMPEL
ANSWERS TO INTERROGATORIES AND PRODUCTION OF DOCUMENTS,
FOR ATTORNEY'S FEES, AND FOR SANCTIONS**

COME NOW Defendants Joseph Salazar, Greg Esparza, the Espanola Department of Public Safety, Leo Montoya and the City of Espanola (hereinafter collectively referred to as "Espanola Defendants"), by and through their undersigned counsel, and for their Response to Plaintiff's Motion to Compel Answers to Interrogatories and Production of Documents, for Attorney's Fees, and for Sanctions, state as follows:

Answers to Plaintiff's First Set of Interrogatories to Defendant Joseph Salazar

Plaintiff complained that the Espanola Defendants did not serve a signed Verification Statement with their Answers to Plaintiff's First Set of Interrogatories to Defendant Joseph Salazar and their Supplemental Answers to Plaintiff's First Set of Interrogatories to Defendant Joseph Salazar. [DOC 46, pp. 3-4] However, these Verification Statements were subsequently served on Plaintiff's counsel prior to the filing of the instant motion. As such, Plaintiff cannot insist on an order compelling the Espanola Defendants to provide Verification Statements which they have already produced. Plaintiff's Motion to Compel must be denied in this respect.

Answers to Plaintiff's First Set of Interrogatories to Defendant Leo Montoya

Defendant Leo Montoya retired from the City of Espanola in April 2012. Defendant Montoya presently works out of town, and his availability is limited to evenings and weekends, which make him very difficult to reach. Turnover in police departments is not an unusual event. The Espanola Defendants will continue to reach Defendant Montoya in order to obtain the complained-of Verification Statement, but an award of attorney's fees and sanction is not appropriate under these circumstances. The Espanola Defendants request that the Court order a reasonable time period for compliance.

Responses to Plaintiff's Request for Production No. 11

This Request for Production sought "all documents evidencing any type of grievance, complaint, internal affairs investigation, or disciplinary action involving Defendants Joseph Salazar or Greg Esparza." Per the agreement between the City of Espanola and the police union, verbal and written reprimands are subject to removal from an officer's personnel file within a stated timeframe. See, selected excerpts from the union contract, *attached hereto* as Exhibit A. Afterwards, these documents are not maintained by the department. Defendant Greg Esparza stated in his Answer to Plaintiff's Interrogatory No. 15 to Espanola Defendants that the verbal and written counseling he received have since been removed from his personnel file. See, Exhibit B. Following their removal from the personnel file, these documents were not preserved or maintained elsewhere. As for Defendant Joseph Salazar, his personnel file indicated reprimand documents he received when he worked as a detention officer before he was ever employed by the department as a police officer. Since no documents exist responsive to this Request for Production, the discovery motion must be denied.

Responses to Plaintiff's Request for Production No. 12

Plaintiff did not confer with opposing counsel in good faith in resolving this particular discovery dispute prior to the filing of the instant discovery motion. On December 16, 2014, Plaintiff's counsel sent a "good faith" letter. See, Exhibit C. Because the letter's deadline fell on during the holidays, the parties agreed to meet and confer after the New Year holiday. The meet and confer did not occur since the parties were unable to accommodate each other's schedules. See, Exhibit D. Rather than continue to discuss available times, Plaintiff's counsel simply filed a discovery motion. A meet and confer was needed for this particular Request for Production since Plaintiff sought "all documents evidencing the use of force by Defendants Joseph Salazar or Greg Esparza on any individual." The Espanola Defendants needed clarification of the term "use of force" since Plaintiff did not define this term. Without a definition, the Espanola Defendants are unable to independently determine what documents are being sought. Does Plaintiff want use of force documents involving only Tasers? Or does Plaintiff want use of force documents involving other kinds of use of force such as hand-control techniques, mace, batons, firearms, etc.? A meet and confer would have resolved the issue if Plaintiff's counsel had not acted so unilaterally. And Plaintiff's Motion to Compel failed to mention what type of use of force documents Plaintiff needs. Because no substantive argument has been advanced by Plaintiff, the discovery motion must be denied.

Answers to Plaintiff's First Set of Interrogatories Nos. 2-8, 18-28

Plaintiff's First Set of Interrogatories Nos. 2-8 were directed towards Defendant Joseph Salazar. Defendant Salazar's personnel file was produced in discovery. The personnel file contained Joseph Salazar's job application, which contained detailed information concerning Salazar's educational and work background. See, selected excerpts of Salazar's application,

attached hereto as Exhibit E. The personnel file also contained the training certificates Officer Salazar received. Finally, the Incident Report (with its detailed narration of events) was authored by Salazar himself. See, Exhibit F. Plaintiff's discovery motion fails to mention at all how these comprehensive documents are inadequate. Because no substantive argument has been advanced by Plaintiff, the discovery motion must be denied.

Leo Montoya retired from the City of Espanola in April 2012. Defendant Montoya presently works out of town, and his availability is limited to evenings and weekends, which make him very difficult to reach. Turnover in police departments is not an unusual event. The Espanola Defendants will continue to reach Defendant Montoya in order to obtain the Interrogatory Answers sought by Plaintiff, but an award of attorney's fees and sanction is not appropriate under these circumstances. The Espanola Defendants request that the Court order a reasonable time period for compliance.

WHEREFORE, the Espanola Defendants respectfully request that the Court deny Plaintiff's Motion to Compel Answers to Interrogatories and Production of Documents, for Attorney's Fees, and for Sanctions, and for such other and further relief that the Court deems is appropriate.

Respectfully submitted by:

Basham & Basham, P.C.

Electronically filed 01/26/15

/s/ Mark A. Basham

Mark A. Basham

2205 Miguel Chavez, Suite A

Santa Fe, New Mexico 87505

505-988-4575

Fax: 505-992-6170

mbasham@bbpcnm.com

Attorneys for Espanola Defendants

CERTIFICATE OF SERVICE

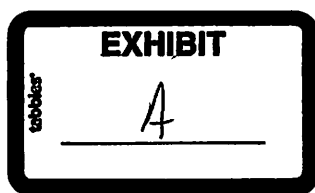
I HEREBY CERTIFY that on the 26th day of January, 2015, I filed the foregoing Espanola Defendants' Response to Plaintiff's Motion to Compel Answers to Interrogatories and Production of Documents, for Attorney's Fees, and for Sanctions, which caused counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Todd A. Coberly
Coberly Law Office
1322 Paseo de Peralta
Santa Fe, NM 87501
Attorneys for Plaintiff
tcoberly@cna-law.com

Robert W. Becker
Yenson, Allen & Wosick, P.C.
4908 Alameda Blvd., NW
Albuquerque, NM 87113-1376
Attorneys for County Defendants
rbecker@ylawfirm.com

Charles Purcell
Rodey, Dickason, Sloan, Akin & Robb, P.A.
P.O. Box 1888
Albuquerque, NM 87103-1888
Attorneys for Defendant Fernando Bayardo, M.D.
kpurcell@rodey.com

/s/ Mark A. Basham
Mark A. Basham



examination any adverse witnesses during any grievance process or appeal involving disciplinary action.

E. Personnel files:

1. No document containing comments adverse to a peace officer shall be entered into his personnel file unless the officer has read and signed the document. When an officer refuses to sign a document containing comments adverse to him, the document may be entered into an officer's personnel file if:
 - a. The officer's refusal to sign is noted on the document by the chief administrator of the officer's employer; and
 - b. The notation regarding the officer's refusal to sign the document is witnessed by a third party.
2. A peace officer may file a written response to any document containing adverse comments entered into his personnel file and the response shall be filed with the officer's employer within thirty days after the document was entered into the officer's personnel file. A peace officer's written response shall be attached to the document.
3. An employee's only official file shall be located in and maintained by the Human Resources Department.

F. Constitutional rights; notification:

When any peace officer is under administrative investigation and a determination is made to commence a criminal investigation, he shall be immediately notified of the investigation and shall be afforded all the protections set forth in the bill of rights of the United States and New Mexico constitutions.

G. Forced disclosure of financial status prohibited:

A peace officer shall not be required by his police department employer to disclose information regarding his financial status, unless all other reasonable investigative means have been exhausted or except as otherwise required by law.

H. Political activity:

A peace officer shall not be prohibited by his police department employer from engaging in any political activity when the officer is off duty, except as otherwise required by law.

I. Exercise of rights:

A peace officer shall not be subjected to any retaliation by his employer due to the officer's lawful exercise of his rights under the Peace Officer's Employer-Employee Relations Act and this agreement.

Article 28

Disciplinary Action

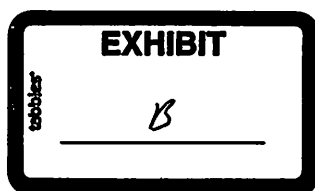
- A. In the event that an investigation results in the implementation of disciplinary action, if the investigated employee so requests, the Union may designate a representative to participate in all stages of the proceedings. The employee shall be provided with copies of the written charges and discipline decision.

- B. An attempt will be made to notify an employee in a disciplinary action in everyday language. The language need be only specific enough to notify the employee of the alleged misconduct.
- C. Verbal Reprimands and Written Reprimands are considered corrective action and are not considered disciplinary action. Corrective action is not subject to appeal and is subject for removal after six (6) months. Disciplinary actions shall include only the following and are subject for removal as follows:
 - a. Suspension one (1) year
 - b. Demotion two (2) years
 - c. Dismissal (permanent)
- D. An employee shall be progressively disciplined if appropriate, however, the City may determine at which stage of progression the discipline shall be imposed on a case-by-case basis depending on the seriousness of the infraction.
- E. Prior to the implementation of any disciplinary action on a bargaining unit employee, the employee will be afforded an opportunity to respond to the charges in a pre-disciplinary hearing before the Chief or his designee.
- F. An employee who is disciplined and feels that the disciplinary action is unjust may appeal the action through the grievance and appeal procedures as set forth in this agreement.

Article 29

Grievance, Appeal Procedures, and Arbitration

- A. A grievance is defined as any written dispute that may arise between the parties, including disciplinary actions resulting in written reprimands through dismissal or a violation of this agreement.
- B. The employee may file a written grievance within five (5) business days of the date the employee knew or should have known of the issue that generated the grievance. Failure to do so will result in the grievance being null and void. An automatic appeal to the next grievance level will be guaranteed the employee in the City does not respond within the time limits.
- C. Grievance steps:
 - a. Step 1 – The employee shall file a written grievance within five (5) business days of the date the employee knew or should have known of the issue that generated the grievance. Such written grievance shall be filed with the Chief of Police or his designated representative and a copy provided to the personnel director. The Chief of Police or his designee shall schedule a meeting with the grievant and his/her representative, if the employee has chosen to be represented, in an attempt to resolve the grievance. Within seven (7) business days of the Chief's meeting the Chief or his designee will render a written decision. If the employee (grievant) is not satisfied with the



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JOSEPH SALAZAR, et al.,

Defendants.

**ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
TO DEFENDANT GREG ESPARZA**

COMES NOW Defendant Greg Esparza, by and through his attorneys Basham & Basham, P.C. (Mark A. Basham) and for his Answers to Plaintiff's First Set of Interrogatories to Defendant Greg Esparza, states as follows:

INTERROGATORIES

Plf.'s Interrogatory No. 10 to Espanola Defs.: Provide a full and detailed description of your involvement and interactions with Plaintiff and Plaintiff's wife, Jackie Martinez, on May 11, 2012. Include in your answer all events that occurred at the Espanola Sonic, all events that occurred at Presbyterian Espanola Hospital, the specific identities of any person who was present at either location, and any statements made by any person.

ANSWER:

On Friday May 11 at approximately 1430 hours I responded to a call for assistance by Officer Joseph Salazar at the Fairview Sonic Located in Espanola. As I arrived on scene I observed Officer Salazar attempting to restrain a male subject on the south side of the building in the parking lot. The male subject was later identified as Russell Martinez. I observed Mr.

Plf.'s Interrogatory No. 15 to Espanola Defs.: Please provide a full and detailed description of any disciplinary action that has been taken, or any grievance or complaint that has been lodged, against you in your capacity as a law enforcement officer, whether you were employed by the City of Espanola or elsewhere.

ANSWER:

Approximately 9/2010 I received a verbal counseling for not attending a Grand Jury Hearing.

Approximately 11/2012 I received a written counseling when a senior office accused me of excessive force when I assisted an officer in training that was struggling to take a subject into custody. I only assisted when I observed the training officer making no attempt to assist the officer in training.

Both of these actions have been dropped from my personal file.

EXHIBIT

tabbies

C

December 16, 2014

VIA EMAIL

Mark A. Basham
Basham & Basham, P.C.
2205 Miguel Chavez Road, #A
Santa Fe, NM 87505-1111
(505) 988-4575
mbasham@bbpcnm.com

Re: *Martinez v. Salazar, et al.*; No. 14-cv-00534 KG/WPL

Dear Mark,

I write in regards to certain deficiencies within Espanola Defendants': (1) Responses to Plaintiff's First Set of Requests for Production to Defendants City of Espanola and Espanola Department of Public Safety; (2) Answers to Plaintiff's First Set of Interrogatories to Defendants City of Espanola and Espanola Department of Public Safety; (3) Answers to Plaintiff's First Set of Interrogatories to Defendant Joseph Salazar; (4) Answers to Plaintiff's First Set of Interrogatories to Defendant Greg Esparza; (5) Answers to Plaintiff's First Set of Interrogatories to Defendant Leo Montoya; (6) Supplemental Responses to Plaintiff's First Set of Requests for Production to Defendants City of Espanola and Espanola Department of Public Safety; and (7) Supplemental Answers to Plaintiff's First Set of Interrogatories to Defendant Joseph Salazar.

I. Defendants' Answers to the Interrogatories Do Not Comply With Fed. R. Civ. P. 33.

Federal Rule of Civil Procedure 33 provides that "[e]ach interrogatory *must*, to the extent it is not objected to, be answered separately and fully in writing *under oath*." Fed. R. Civ. P. 33(b)(3) (emphases added). It is hornbook law that a party's "unsigned and unverified responses do not qualify as answers to interrogatories." *Bardwell v. K&R Delivery, Inc.*, 1987 WL 28261, at *1 (N.D. Ill. Dec. 14, 1987) (citing cases); *see also, e.g., In re Asbestos Prods. Liability Litigation (No. VI)*, 2012 WL 5839023, at *12 (E.D. Pa. Nov. 16, 2012) ("[I]nterrogatory responses that have not been verified by [party], regardless of the source of knowledge, must be struck.").

All of Espanola Defendants' answers to interrogatory numbers 1-28 are unsigned and unverified. Please rectify this deficiency immediately.

II. Defendant Salazar Has Failed to Answer Any of the Interrogatories.

Defendant Joseph Salazar failed to answer any of the interrogatories propounded to him, i.e., interrogatory numbers 2-9. Initially, you responded on Mr. Salazar's behalf claiming that

December 16, 2014

RE: *Martinez v. Salazar, et al.*

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Mr. Salazar could not be located. In supplementing these “answers,” you referred Plaintiff to certain documents. Neither set of responses comply with Federal Rule of Civil Procedure 33. As an initial matter, interrogatories “*must* be answered . . . *by the party* to whom they are directed.” Fed. R. Civ. P. 33(b)(1) (emphases added). Counsel’s statements, or explanations as to why a party cannot answer, are insufficient.¹ Second, in supplementing Defendant Salazar’s answers, you referred me to Defendant Salazar’s personnel file. Although a fraction of the information I requested from Defendant Salazar in interrogatory numbers 4-7 can be ascertained from his personnel file, the supplemental answers are insufficient because the documents do not come close to providing all requested information. *See* Fed. R. Civ. P. 33(d). Moreover, the supplemental answers are deficient because Defendant Salazar failed to sign or verify them.

Please have Defendant Salazar answer interrogatory numbers 2-9 in compliance with Fed. R. Civ. P. 33.

III. Defendant Montoya’s Answers Are Wholly Deficient.

Plaintiff propounded eleven interrogatories (interrogatory numbers 18-28) to Defendant Leo Montoya. Defendant Montoya refused to answer any of these interrogatories on the grounds that “the complained-of incident occurred (approximately one month) following his retirement.” Plaintiff asserts a claim against Defendant Montoya for negligent hiring, training, and/or supervision. The mere fact that Defendant Montoya may have retired shortly before Defendants Salazar and Esparza used excessive force on Plaintiff might possibly negate a claim that Defendant Montoya negligently supervised those defendants, but it does nothing to alter the fact that Defendant Montoya could be liable for negligently hiring or training those defendants. Should you believe that Defendant Montoya should not be a part of this lawsuit simply because he retired shortly before the “complained-of incident,” the proper course is to file a motion to dismiss—not refuse to answer interrogatories.

Please have Defendant Montoya answer interrogatory numbers 18-28 in compliance with Fed. R. Civ. P. 33.

IV. Defendants’ Response to RFP No. 11 Needs to Be Supplemented.

In RFP number 11, Plaintiff requested “all documents evidencing any type of grievance, complaint, internal affairs investigation, or disciplinary action involving Defendants Joseph Salazar or Greg Esparza.” Defendants responded by saying that this RFP was “not applicable.”

¹ In this regard, I am troubled by Defendant Salazar’s purported answer to interrogatory number 2. Given the claimed inability to locate Defendant Salazar, I fail to understand how Defendant Salazar could provide me a “full and detailed description of [his] involvement with Plaintiff and Plaintiff’s wife, Jackie Martinez, on May 11, 2012.” It appears to me that the “answer” to interrogatory number 2 is simply a version of the events drafted by counsel and not a firsthand account from Defendant Salazar as required by Rule 33. Regardless, this “answer” is deficient because it is not signed or verified by Defendant Salazar.

December 16, 2014

RE: *Martinez v. Salazar, et al.*

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In his (purported) answer to interrogatory number 15, however, Defendant Esparza refers to two reprimands he received as an Espanola Police Officer. Defendant Esparza claims that these “actions have been dropped from [his] personal file.”

Regardless of whether the actions against Defendant Esparza were “dropped” from his personnel file, I request production of this documentation. If Defendants claim that every single piece of documentation pertaining to these incidents has been destroyed, please comply with instruction number 8, which provides: “If any document responsive to these requests existed at one time, but no longer exists, identify the document, state why it no longer exists, and describe the circumstances of its loss, destruction or other disposition.”

V. Defendants’ Response to RFP No. 12 Needs to Be Supplemented.

In RFP number 12, Plaintiff requested “all documents evidencing the use of force by Defendants Joseph Salazar or Greg Esparza on any individual.” Defendants responded by producing only the use of force report underlying the incident that forms the basis of this action. Yet, as discussed above, Defendant Esparza has admitted to being involved in at least one other use of force incident (in November 2012). Please confirm that it is Espanola Defendants’ position that there is absolutely no other documentation evidencing Defendants Salazar or Esparza’s use of force on any other individual. If that is not the case, please supplement Defendants’ production of documents.

Pursuant to D.N.M.Lr.-Civ. 26.6, I have until December 29, 2014 to file a motion to compel. Accordingly, please respond to this letter and rectify all noted deficiencies by December 26, 2014.

Best regards,



Todd A. Coberly

cc: Joseph Romero (via email)



Joseph L. Romero

From: Todd A. Coberly <tcoberly@cna-law.com>
Sent: Monday, January 12, 2015 12:17 PM
To: Joseph L. Romero
Subject: Re: Martinez v. Salazar et al.

I will try you this afternoon.

Sent from my iPhone

On Jan 12, 2015, at 10:42 AM, "Joseph L. Romero" <jromero@bbpcnm.com> wrote:

I was under the impression that we would be speaking with each other following the holidays. I would like to talk before you file any discovery motion. Are you free on Wed.? I am free all day. Please let me know.

Joseph L. Romero, Esq.
BASHAM & BASHAM, P.C.
505-988-4575
505-992-6170 fax

From: Todd A. Coberly [<mailto:tcoberly@cna-law.com>]
Sent: Sunday, January 11, 2015 11:39 PM
To: 'Joseph L. Romero'
Cc: 'Mark Basham'
Subject: Martinez v. Salazar et al.

Joe,

Please see the attached letter addressing your December 11, 2014 letter to me. In addition, I have yet to receive a response to my December 16, 2014 letter addressing certain deficiencies in Espanola Defendants' responses to Plaintiffs first set of discovery. I am prepared to file a motion to compel on the issues raised in that letter. Please confirm that you oppose that motion.

Regards,
Todd

Todd A. Coberly
COBERLY LAW OFFICE
1322 Paseo de Peralta
Santa Fe, NM 87501
(505) 989-1029
tcoberly@cna-law.com

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Version: 2014.0.4800 / Virus Database: 4257/8917 - Release Date: 01/12/15



"CONFIDENTIAL"

CITY OF ESPAÑOLA

**PERSONAL HISTORY STATEMENT
APPLICATION FOR POSITION OF:
POLICE CADET _____ LATERAL OFFICER X
DETENTION OFFICER _____**

SOCIAL SECURITY NUMBER DATE 01 / 17 / 12

GENERAL INSTRUCTIONS:

This "Personal History Statement" is an important document in the selection process. If this form is not completed properly and legibly, your application cannot be processed.

Use only black ink.

Hand print and/or type an answer to every question. If the question does not apply to you, so indicate with "N/A." If space available is insufficient, use a separate sheet of paper and number each answer with the correct number of the question. Completeness is important.

Do not misstate or omit material facts. Your statements are subject to verification, and any attempt to deceive or falsify information, or to omit pertinent information, will be cause for your elimination from the selection process.

1. SALAZAR JOSEPH A.
Legal Name (Last) (First) (Middle)

2. Jojo
By what other name(s) have you been known (maiden, alias, and nicknames?)

3. N.M.
Residence Address (Number, Street, Apt.#, City, State, Zip Code, Phone Number) w/area code

4. N.M.
Mailing Address (if different than above)

5. New Mexico
Date of Birth Place of Birth (City, County, State)

6. Are you a U.S. Citizen by birth or a naturalized citizen? U.S. Citizen by birth

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EMPLOYMENT

19. List below; PRESENT TO PAST, each and every place where you were employed. OMIT NONE including part-time employment. List complete addresses and zip codes. List any periods of unemployment in proper sequence.

A. 01/11 - present Tesque Tribal Police Department (505) 988-9119
Month and Year Employer Name Employer Phone
From: To:
Patrolman RT. 42 Box 360-T Santa Fe N.M. 87532
Position Held Employer's Address Reason for work closer to home
(Street, City, State & Zip Code) Leaving and continue getting PERA

Patrolling pueblo, traffic safety, responding to calls Cpt. Raymond Coriz
Brief Description of Duties Immediate Supervisor

01/11 - present work closer to home and continue getting PERA.
Unemployed From: To: Reason

B. 01/09 - City of Española (505) 753-6024
Month and Year Employer Name Employer Phone
From: To:
Detention Officer 405 N. Paseo De Oñate To further law enforcement career.
Position Held Employer's Address Reason for
(Street, City, State & Zip Code) Leaving

supervision of inmates, transport Ted Garcia
Brief Description of Duties Immediate Supervisor

Unemployed From: To: Reason

C. 05/00 - 10/00 Dairy Queen (505) 753-5887
~~Dairy Queen~~ Employer Name Employer Phone
From: To:
Cook 1702 N. Riverside Dr. was a sophomore in high school and wanted
Position Held Employer's Address Reason for to concentrate more
(Street, City, State & Zip Code) Leaving in academics.

Prepared food, cleaned and washed dishes, floors, assisted customers Marcy Martinez
Brief Description of Duties Immediate Supervisor

"CONFIDENTIAL"

GENERAL

37. What college degree or professional license(s) do you possess? None

38. Do you have a high school diploma or a GED? Yes

39. List below the middle school(s), college(s), trade or business school(s) you have attended. Do not list military school(s)

Start with middle school first.

Name of School	Location	Attendance Dates	
		From Mo/Yr	To Mo/Yr
Mesa Vista Middle School	Ojo Caliente, N.M.	08/02	- 08/04

40. If you were (or are now) a member of any social, labor, or fraternal organizations, list them below.

Date	Organization	Type of Organization	Address
N/A			

41. Have you ever had garnishments or assignments made on your wages, or received a letter of indebtedness? Yes No X If yes, explain

42. List ALL financial liabilities (contract, charge accounts, etc.) involving you and if married, your spouse.

To Whom Owed	Phone	Address	Date	Orig. Amt.	Balance	Monthly Payment
N/A						



OCCURRENCE DATE(S)				DATE REPORTED		UNIFORM INCIDENT REPORT				ORI NO.		INCIDENT NO.		PAGE										
ON OR BETWEEN										NM0210100		12-05-129		1 OF 1										
MM/DD/YY		MM/DD/YY		MM/DD/YY		AGENCY / COUNTY				DISTRICT NO.		OPTIONAL USE (CASE NO., ETC.)		BIBLIOGRAPHY NO. OF UNITS ENT.										
05/11/2012		05/11/2012		05/11/2012		ESPANOLA POLICE				C1														
TIME		DAY OF WEEK		TIME		DAY OF WEEK		ADDRESS/LOCATION OF INCIDENT				CITY		ZIP										
14:27		Fri		14:29		Fri		1207 N RIVERSIDE DR				ESPANOLA		87532										
OFFENSE	OFFENSE / INCIDENT				STATUTE OR ORDINANCE				FEL. INFO.		MISC. INFO.		UCR OFFENSE CODE		CRIMINAL ACTIVITY CODE		LOCAT CODE		WEAPON CODE		OFFENSE(S) SUSPECTED OF (USING)		NO. OF UNITS ENT.	
	1 BATTERY UPON PEACE OFFICER				30-22-24								X 53F				21		40				X	
	2																							
	3																							
SUBJECTS (VICTIMS / SUSPECTS / PERSONS / BUSINESSES)	PERSON CODES				TYPE CODES				INJURY CODES				L-SEVERE LACERATION				T-LOSS OF TEETH							
	0-PARENT/GUARDIAN				1-INDIVIDUAL				2-APPARENT BROKEN BONE				M-APPARENT MINOR INJURY				U-UNCONSCIOUSNESS							
	1-WITNESS				3-FINANCIAL INST.				4-RELIGIOUS				5-APPARENT BROKEN BONE				V-LOSS OF TEETH							
	2-DECEASED				4-POLICE				5-SOCIETY/PUB				6-APPARENT MINOR INJURY				W-UNCONSCIOUSNESS							
	3-MISSING PERSON/RUNAWAY				5-OTHER				6-UNKNOWN				7-OTHER MAJOR INJURY				X-NONE							
	1-NAME (LAST, FIRST, MIDDLE)				SOCIAL SECURITY NO.				DOB				AGE (RANGE)				SEX							
	S I MARTINEZ,RUSSEL								10/11/1962				49				M							
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	PO BOX 4984												5'04"				115							
	CITY				STATE				ZIP				BUS. PHONE				VICTIM OF OFF. NO.							
	ESPANOLA				NM				87533															
	OCCUPATION				EMPLOYER / SCHOOL				EMPLOYER / SCHOOL ADDRESS				GANG AFFILIATION											
ALIAS / NICKNAME				MARKS, SCARS, TATTOOS				ARMED WITH (SEE CODES)				TYPE OF ARREST												
DRIVER'S LICENSE NO.				D.L. STATE				ARREST / CITATION NO.				F.B.I. NO.				S.I.D. NO.								
50455500				NM																				
2-NAME (LAST, FIRST, MIDDLE)				SOCIAL SECURITY NO.				DOB				AGE (RANGE)				SEX								
V I SALAZAR,JOSEPH												22				M								
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CITY				STATE				ZIP				BUS. PHONE				VICTIM OF OFF. NO.								
				NM																				
OCCUPATION				EMPLOYER / SCHOOL				EMPLOYER / SCHOOL ADDRESS				GANG AFFILIATION												
CORRECTIONAL OFFICER				ESPANOLA DETENTION CENTER																				
ALIAS / NICKNAME				MARKS, SCARS, TATTOOS				ARMED WITH (SEE CODES)				TYPE OF ARREST												
DRIVER'S LICENSE NO.				D.L. STATE				ARREST / CITATION NO.				F.B.I. NO.				S.I.D. NO.								
50455500				NM																				
3-NAME (LAST, FIRST, MIDDLE)				SOCIAL SECURITY NO.				DOB				AGE (RANGE)				SEX								
												00/00/0000												
STREET ADDRESS				APT. NO.				RES. PHONE				HEIGHT				WEIGHT								
												' 0"												
CITY				STATE				ZIP				BUS. PHONE				VICTIM OF OFF. NO.								
OCCUPATION				EMPLOYER / SCHOOL				EMPLOYER / SCHOOL ADDRESS				GANG AFFILIATION												
ALIAS / NICKNAME				MARKS, SCARS, TATTOOS				ARMED WITH (SEE CODES)				TYPE OF ARREST												
DRIVER'S LICENSE NO.				D.L. STATE				ARREST / CITATION NO.				F.B.I. NO.				S.I.D. NO.								
VEHICLE	VEH. STATUS CODE				VEH. TYPE CODE				01-AIRPLANE				24-OTHER MOTOR VEHICLES				39-WATERCRAFT							
	1-STOLEN				2-BURNED				3-REC. (STOLEN LOCALLY)				4-REC. (STOLEN OTHER JURIS.)				5-SEIZED							
	6-ABANDONED				7-DAMAGED/VANDALIZED				8-SUSPECTS VEHICLE				9-VICTIMS VEHICLE				10-AUTOMOBILE							
	YEAR				MAKE				MODEL				BODY STYLE				LICENSE NO.							
REGISTERED OWNER'S NAME (OR SAME AS SUBJECT NO.)				VIN				DISTINGUISHING FEATURES / VISIBLE DAMAGE																
ADDRESS				TOW TO / BY				CAN VEH REL				NIC NO.												
								YES				NO												
AGENCY OPTIONAL USE																								

Incident Narrative

12-05-129

On Friday May 11th, 2012 at approximately 1427 I Officer Joseph Salazar was in route to assist Officer Robert Vigil when dispatch advised me there were already units on scene and re routed me to 1207 North Riverside Drive Fairview Sonic in reference to a woman running and yelling for someone to call police.

Upon arrival I made contact with Carhop Sonic Employee Hermenajildo Quintana, he pointed me in the direction of the woman who advised him to call. I observed a woman in a black shirt hiding behind one of the ordering menu's. I then approached the woman identified as Jackie Martinez and spoke with her. She advised me that she and her husband Russell Martinez drove up to sonic to get a slushi when he became very angry and intimidating and fighting with Mrs. Martinez. During the fight, Mr. Martinez attempted to leave the sonic parking lot in the vehicle. Mrs. Martinez then grabbed the key from the ignition as she did so; Mr. Martinez grabbed her by the arm and stopped her from exiting the vehicle. After struggling to get free, Mrs. Martinez exited the vehicle and began yelling for someone to call police. Mrs. Martinez then pointed the vehicle out to me in which Mr. Martinez was in.

At this time, I proceeded to the vehicle in attempt to speak with Mr. Martinez. Upon approaching the vehicle, I observed a brown paper bag over Mr. Martinez's right hand. I then opened the driver's side door when he was located and asked Mr. Martinez to step out of the vehicle so we could speak about the situation. He then yelled at me saying "Fuck You" and shut the door almost smashing my fingers. I then attempted to open the door again and it was locked so I knocked on the window of the vehicle. Mr. Martinez then opened the driver's side door again and yelled at me, but I was unable to understand what he said. I then held the door open slightly and asked him one more time to step out of the vehicle in which at this time Mr. Martinez pushed the door open hitting me and striking me with a closed fist on the left side of my head.

At this time, I attempted to grab Mr. Martinez by the arm to pull him out of the vehicle when he lunged with his right hand and grabbed the butt of my sidearm. I then called dispatch via handheld radio to send me another unit. When I broke free of his grasp on my sidearm, he attempted to strike me with a punch again this time not connecting. I then pulled Mr. Martinez out of the vehicle and onto the ground in attempt to apprehend him. While doing so, he kept attempting to reach my firearm. I this time I drive stunned Mr. Martinez and gave him commands to put his hands behind his back. The drive stun had no effect on him. At this time a passer-by attempted to assist me by holding Mr. Martinez's arms down when Mr. Martinez bit him. Officer Greg Esparza then arrived on scene and tazed Mr. Martinez in which at this time I was able to apprehend him and place him into cuffs.

Paramedics were called to the scene and took the prongs out of Mr. Martinez. They also transported him to the emergency room via ambulance to get a medical clearance. At this time, I went to the Emergency Room to wait for Mr. Martinez to get cleared from the hospital. While waiting there, he kept making statements to the nurses and doctors that I beat him up and he was going to have my job because he knows the Sheriff.

Attached to this report will be statements made by Mrs. Martinez, Mr. Quintana, the sonic employee who called, and Mr. Mario Lovato who assisted me.

Incident Narrative
12-05-129

Attach to case # 12-05-129

12-05-129
23 12 144



CITY OF ESPAÑOLA
DEPARTMENT OF
PUBLIC SAFETY

Mayor Alice A. Lucero

Leo R. Montoya
Chief of Public Safety

1316 Calle Adelante
Suite C
Española, NM 87532
Phone: 505-747-6002
Fax: 505-747-6059

This is a voluntary statement given to Officer/Detective Joseph Salazar.
A full salaried, fully commissioned Officer of the Española Police Department. This statement
was given by Hermenegildo Jr. Quintana on (date) 5/11/2012
at 1500 hours.

Q. Do you wish to write this statement, or would you like for me to?

A.

Q. What is your full name?

A. Hermenegildo Jr. Quintana

Q. What is your Social Security Number?

A.

Q. How old are you?

A. 25

Q. What is your Date of Birth?

A. 9/27/86

Q. What is your address?

A. 150 Calle Celestino

Q. What is your telephone number?

A. (505) 901-3738

Q. If you are a Juvenile, what is your father's name?

A. No not a Juvenile

Q. If you are a Juvenile, what is your mother's name?

A.

Q. Do you read, write, speak and understand English?

A. yes

Q. What is your occupation?

A. Sconic manager

Q. Do you understand what a voluntary statement is?

A. yes

Q. Do you wish to give me a voluntary statement?

A. yes

Q. In your own words, could you tell me everything that you know, pertaining to this incident?

A. yes

SEE REVERSE

Incident Narrative

12-05-129

I had called the police to come to the scene cause a woman was crying out for help. When the officer got here she had spoke to him about what was going on. then the officer had went to speak to a man in a green grand am the man refused to get out of the car so the officer asked the man again at that moment I saw the man attacked the officer, when I had came back out the second time I saw the man striking the officer about three or more time when the other units came to help the officer 1 of the officers had to take the man,

Incident Narrative
12-05-129



CITY OF ESPAÑOLA
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This is a voluntary statement given to Officer/Detective Joseph Salazar.
A full salaried, fully commissioned Officer of the Española Police Department. This statement
was given by Mario Lovato on (date) 5-11-12
at 2:45 PM. hours.

Q. Do you wish to write this statement, or would you like for me to?

A. I will

Q. What is your full name?

A. Mario A. Lovato

Q. What is your Social Security Number?

A. 525-37-4674

Q. How old are you?

A. 32

Q. What is your Date of Birth?

A. 6-12-79

Q. What is your address?

A. P.O. box 1457
Española, N.M. 87532

Q. What is your telephone number?

A. 929-3980

Q. If you are a Juvenile, what is your father's name?

A. N/A

Q. If you are a Juvenile, what is your mother's name?

A. N/A

Q. Do you read, write, speak and understand English?

A. Yes

Q. What is your occupation?

A. Home Health Care

Q. Do you understand what a voluntary statement is?

A. No

Q. Do you wish to give me a voluntary statement?

A. Yes

Q. In your own words, could you tell me everything that you know, pertaining to this incident?

A. See Reverse

SEE REVERSE

Incident Narrative

12-05-129

NARRATIVE

at about 2:40 p.m. I drove into Sonic in fairview to get something to eat and noticed a rapid officer having a scuffle with a man who looked like he was high on something. I then got out of my vehicle to help the officer. The man fighting w/ the officer was yelling he had HIV/Aids and tried to bite me on the arm and leg. I told the officer im gonna restrain his head and arms so I held his head down w/ my knee. And continued to hold his arms w/ my hand to keep him from hitting the officer. I was advised by EMT's to go to ER. as soon as possible to get my blood tested for any types of diseases he might of had.

Mario Lovato
Signature

5-11-12
Date

Thomas Benavidez
Witness

Incident Narrative
12-05-129

12-05-129



SUPERVISORY TASER USE REPORT

Date/Time: 5/11/12 TASER Officer's Name: Greg Esparza

E-mail: _____ Department: Espanola PD

Dept Address: 1316 C. Calle Adelante Phone: 505-747-6000

On Scene Supervisor: Cpl. M. Maes Officer(s) Involved: Off. Joseph Salazar

TASER® Model (check one): ☒ TASER X26 ☐ ADVANCED TASER M26

If an ADVANCED TASER M26 Was Used, What Battery Type: ☐ Alkaline ☐ NIMH Rechargeable

TASER Cartridge Type(s): ☐ 21-ft Standard ☐ 21-ft XP ☒ 25-ft Standard ☐ 25-ft XP
☐ 35-ft XP ☐ 15-ft

TASER Serial #: X00627661 Medical Facility: _____ Doctor: _____

Nature of the Call or Incident: Domestic Dispute Charges: Battery on a PO Booked: ☒ Y ☐ N

Type of Subject: ☒ Human ☐ Animal

Location of Incident: ☐ Indoor ☒ Outdoor ☐ Jail ☐ Hospital

Type of Force Used (Check all that apply): ☒ Physical ☐ Baton ☐ Impact Munition
☐ Chemical ☐ Firearm

Nature of the Injuries and Medical Treatment Required: Laceration to forehead

Admitted to Hospital for Injuries: Y / N Unknown Admitted to Hospital for Psychiatric: Y / N

Medical Exam ☒ Y ☐ N Suspect Under the Influence: Alcohol ☒ Drugs (specify): Heroin

Was an officer/law enforcement employee injured other than by TASER? ☒ Y ☐ N

Incident Type (circle appropriate response(s) below):

Civil Disturbance Suicidal Suicide by Cop ☒ Violent Suspect Barricaded Warrant Other

Age: 49 Sex: Male Height: 504 Race: Hisp Weight: 115

Was a TASER CAM in use? Y ☒ N

TASER use (circle one): ☒ Success ☐ Failure

Suspect wearing heaving or loose clothes: Y ☒ N

Number of cartridges fired: 1

Number of cycles applied: 2

Usage (check one): ☐ Arc Display Only ☐ Laser Display Only ☒ TASER Application

Incident Narrative
12-05-129

TASER: Is this a dart probe contact? ☒ Y ☐ N

Is this a drive stun contact? ☒ Y ☐ N

Approximate target distance at the time of the dart launch: 4 feet

Distance between the two probes: 12 inches

Need for an additional shot? Y ☒ N

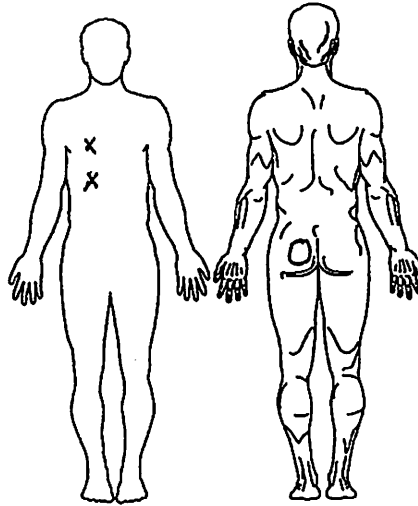
Did dart contacts penetrate the subject's skin? ☒ Y ☐ N

Probes removed on scene: ☒ Y ☐ N

Did TASER application cause injury: Y ☒ N If yes, was the subject treated for the injury: Y / N

DESCRIPTION OF INJURY: Laceration to forehead sustained during scuffle prior to Taser application.

APPLICATION AREAS
(Place "X's" where probes hit suspect AND "O's" where stunned)



SYNOPSIS:

Need for additional applications? ☒ Y ☐ N Did the device respond satisfactorily? ☒ Y ☐ N

If the TASER deployment was unsuccessful was a DRIVE STUN followup used? ☒ Y ☐ N

Describe the subject's demeanor after the device was used or displayed?

Reluctant, Combative, irate

Incident Narrative
12-05-129

Chemical Spray: Y / ☒ N

Baton or Blunt Instrument: Y / ☒ N

Authorized control holds: Y / ☒ N

If yes, what types: _____

Describe other means attempted to control the subject: physical restraint

Photographs Taken: ☒ Y / ☐ N

Report Completed by:

Off. Grey Esparza

ADDITIONAL INFORMATION

1. Save this file to your hard drive and for your department archives.
2. Submit this report to the national TASER technology incident database.
3. Results of uses are reviewed by TASER Int'l to adjust training issues and concerns as well.
4. Email this copy to Andrew@TASER.com. If you cannot email, please fax a copy of this report to: (480) 991-0791 Attn: Andrew Hinz (Ph: 800-978-2737 ext. 2048).